UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	**Cause No. 4:16CR00162 JAR/SPM**
v.	)	
	)	
JOSEPH MASTERS,	)	
	)	
Defendant.	)	

MOTION TO SUPPRESS EVIDENCE, REQUEST FOR A HEARING PURSUANT TO FRANKS V. DELAWARE, AND MEMORANDUM OF LAW IN SUPPORT

Comes now, Joseph Masters, by counsel, and moves this Court to enter an order suppressing all evidence obtained by the government as a result of the search of Masters' home and seizure of his computers and related media pursuant to the Fourth Amendment of the United States Constitution and Federal Rules of Criminal Procedure 12(b)(3) and 41. In support of this motion, Masters submits the following:

Factual Background

1. On March 18, 2016, Joseph Masters went to the residence of Robert Waller to visit with his neighbors located at 9992 Fox Hall Ct., St. Ann, Missouri 63074. Robert Waller, Jamie Fitzgerald, Waller's step-daughter[1], Melissa Wagner, M.M., M.W., T.D., and M.D. were present at the residence. Waller, Fitzgerald, and Wagner were all drinking alcohol. While at the residence, Jamie Fitzgerald, who was intoxicated, confronted Masters and accused him of inappropriately touching her daughter M.M. She got in his face and yelled at him. Waller's step-daughter called

[1] The 911 caller identified herself as Waller's step-daughter.

911 and law enforcement responded to the residence. During the 911 call, she stated that Fitzgerald was "now trying to attack Joe," and one can inaudibly hear a woman yelling in the background. Upon arrival, Officer Cafer was met by Fitzgerald. After speaking with her, Officer Cafer had Masters step outside of the residence where he placed Masters under arrest for peace disturbance. It appears from the discovery that the officers did not interview Masters or any of the children in the residence.

2. Wagner advised Officer Lipson that she believed other children were in Masters' residence located at 9982 Fox Hall Ct., St. Ann, Missouri 63074. The front door of the residence was open and Officer Lipson knocked on the glass storm door where he was met by Masters' mother, Carol Hilton. Officer Lipson told Hilton that the officers needed to check the residence for other children and asked whether anyone else was in the house. Two officers entered the residence into the common living area where a Juvenile X.S. was sitting on the couch. Hilton told the officers that no one else was in the house other than she and X.S. While in the residence, Officer Lipson heard a muffled pop coming from the kitchen area. The officer walked into the kitchen followed by Hilton. While in the kitchen, there was another muffled pop which came from the refrigerator. Officer Lipson then searched the house while Lt. West spoke with Hilton. Neither Hilton, nor Masters who was seated in a patrol car outside the house in handcuffs, gave the officers permission to search the house. Officer Lipson walked through the main floor and then proceeded to the basement. He spent at least five minutes in the basement. At no time did officers draw their weapons when searching the house. Per the discovery, during his protective sweep for other individuals, Officer Lipson observed several overhead lamps illuminating a table with various sheets bundled on top. In another room, he observed a large model airplane and other children's

toys on a mattress. As he approached the steps to the main floor, he observed what appeared to be photography equipment and a book labeled "Wedding Photography." Finally, he observed an orange extension cord winding down the steps with another wire twisted around it. After completing the search of the house and while speaking with Hilton in the common living room area, Officer Lipson allegedly saw a small camera just above the television and five or six large speakers located in various locations around the living room. Neither Ms. Hilton nor Masters verbally consented to a search of the residence or signed a consent to search form for the residence. Before Hilton left the residence on March 18, 2016, law enforcement told her to leave the residence unlocked so that Masters could enter the residence upon release from custody. Hilton ran an errand and returned to the residence after approximately twenty minutes. Upon her return, law enforcement was standing at the front door of the residence and denied her entry to the residence.

3. Thereafter, on March 19, 2016, at 7:00 a.m., Detective Schmidt presented a search warrant and affidavit to Judge Steven Goldman of the St. Louis County Circuit Court. The search warrant requests permission to search the following address and seize the following items (see page four):

Det. Schmidt, DSN#151, of the St. Ann Police Department, of lawful age, being first duly sworn, deposes and says that he has reason to believe

Evidence of Evidence of Felony Child Molestation in the First Degree and Child Pornography

9982 Fox Hall Court, St. Ann Missouri 63074 is described as a single family duplex unit made of red brick construction. The structure is one- story, having one front entry door that faces west and is protected by an additional screen door. Additionally there is a second entry door faces east which is not protected. The structure is positioned on the east side of the street (Fox Hall Court) and is documented through the St. Louis County Property Database per locator number I00286850. The numbers '9982" is clearly posted on the structure front overhang, which is connected to the west side of the residence. 16

is being kept and secreted in the place described as:

Evidence of Felony Child Molestation in the First Degree and Child Pornography to wit: any evidence on the property of 9982 Fox Hall Court, St. Ann, Missouri 63074 and inside the residence of 9982 Fox Hall Court, St. Ann, Missouri 63074, that Officers deem to be evidence in the above said case. More specifically but not limited to:

- Stand-Alone Home Personal Computers
- Networked Home Personal Computer
- Network Servers/ Business Networks
- PDA, Cell Phones and Digital Cameras/Video Cameras
- Modems, Routers, and Wireless Access Points
- Wireless Personal Computers
- Thumb Drives
- All digital media
- Audio/Video recording devices

Photographs and videos 0330

Affiant states that he has reason to believe such goods are being secreted therein because:

Evidence of Felony Child Molestation in the First Degree and Child Pornography to wit: any evidence on the property of 9982 Fox Hall Court, St. Ann, Missouri 63074 and inside the residence of 9982 Fox Hall Court, St. Ann, Missouri 63074, that Officers deem to be evidence in the above said case.

[2]

[2] This is an excerpt of the March 19, 2016 Search Warrant. A complete copy of the Search Warrant file is attached as Exhibit A.

The relevant portion of the search warrant affidavit states the following:

The purpose of this affidavit is to secure a state level search warrant for the residence located at 9982 Fox Hall Court, St. Ann, Missouri 63074 which is located in the city limits of St. Ann, Missouri, having a zip code of 63074. This request is based on information received by multiple victim's expressing the suspect committed the offense of child molestation in the first degree as the suspect had prior knowledge that the victims were less than fourteen years of age to sexual contact.

By way of background and in further details, Thursday, March 17th, 2016, victim informed a guardian that she was inside the suspects residence of 9982 Fox Hall Court within the past 24 hours and that the location was being utilized for displaying pornographic materials to children under the ages of 12 years.

Additionally, the victim explained during the copious acts they were watching together, suspect with his hands, reached underneath the victim's clothes, causing skin to skin sexual contact. The suspect caressed the buttocks of the victim, advancing towards a more sexual behaviour. All acts were designed for the suspect's sexual gratification.

In further details, on March 18th, 2016, suspect was engaged in a verbal argument with the victim's mother. Suspect was subsequently placed under arrest for further investigation.

During initial contact with the suspect, a cursory search for officer safety, revealed several computers and photographic materials.

In closing, during the cursory search, several visual recording devices, in inconspicuous areas of the dwelling. Location observed was in the living room, and in the computer room on the wire rack and on top of computer.

Based on the affirmations contained in the search warrant affidavit. Judge Goldman authorized the search of Masters' residence.

4. Per the return of inventory, the government seized the following items:

1) Multiple VHS tapes;
2) Black surveillance camera and speaker;
3) Dell computer tower with serial number 2Z26SC1;
4) Black surveillance camera;
5) TVRK router with serial number N042931728;
6) Red bag containing young girl clothes;
7) Brackets for towel hook cameras;
8) Makeup mirror and girl headbands;
9) Black surveillance camera and speaker;
10) Miscellaneous youth girl clothes;
11) Two white clothes hooks containing a small camera;
12) One silver two hook containing a small camera;

13) Black super power back external hard drive- Model;
14) Two pornographic magazines;
15) Baby oil and two lotion bottles;
16) Black girls brush and cold sore cream;
17) Gigabyte With board;
18) Four miscellaneous card readers;
19) Five photo albums;
20) Black Port Computer bag;
21) Silver Dell Laptop marked 13 FCCID-E2KWM3945ABG Service tag number 37XWPB1;
22) Silver Dell Laptop marked 2 FCCID-QDS-BRCM1020 Service tag number GH31WC1;
23) Blue and Black Western Digital "My Passport" external hard drive marked 1 with serial number WX61E62A9808;
24) Black computer mouse and power cord;
25) 3 empty boxes for the aforementioned clothes hook hangers;
26) 2 cell phones – black Motorola Model XT912 FCCID: 1HDP56ME1, Black LF flip phone serial number 204C1QX1362932;
27) Container of 7 thumb drive and 1 memory card;
28) 19 VHS Tapes;
29) Multiple Cassette tapes;
30) Three unopened HP Laptops Serial Numbers 5CD526RF4, 5CD526RDX and 5CD5181X0;
31) One box of SWANN containing two security cameras;
32) 27 CD's and 15 DVD's;
33) Silver Dell Laptop marked 1 FCCID: QDS-BRCM1020 Service Tag GQJGVC1;
34) Silver Toshiba laptop serial number XF203064C;
35) ARRIS router with serial number F2BBS5577300511;
36) Black Seagate External Hard Drive marked with 4 serial number 2GHKKCDZ;
37) Black Seagate External Hard Drive serial number NA4LENYW;
38) D-Link media router serial number QBAP1BA001672;
39) Black digital video recorder serial number 2304SEB13040143;
40) LF monitor serial number 804NDEZ1P372;
41) Dell computer tower serial number CS08Z61;
42) Dell monitor model number 1704FPVT;
43) Dell computer tower serial number 6T268C1;
44) White D-Link surveillance camera;
45) Assortment of wires;
46) Black surveillance camera;

47) EPSON Printer/Scanner serial number SEYY252514;
48) Black case with power cords and small Sony Handyman digital video camcorder serial number 1239636 containing 4 GB Sandisk memory card;
49) White box containing photographs;
50) Black surveillance camera;
51) 2 white trash bags containing photographs;
52) Silver case with four Lexar 1 GB compact flash drives;
53) Dell computer tower serial number CXz22D1;
54) Silver Cross necklace containing hair follicle; and
55) Purple bed sheets with off white stains.

5. On March 28, 2016, Detective Schmidt presented a second search warrant requesting permission to search the items seized to Judge Joseph Dueker of the St. Louis County Circuit Court. The search warrant requested permission to search the computers and electronic media seized from Masters' residence on March 19, 2016.

The relevant portion of the search warrant affidavit states the following (see page seven):

Affiant states that she has reason to believe such goods are being secreted therein because:

1. This affiant received information from multiple victim's expressing Joseph Masters committed the offense of child molestation in the first degree as he had prior knowledge that the victims who were less than fourteen years of age to sexual contact.

2. By way of background and in further details, Thursday, March 17th, 2016, victim M.W. informed a guardian that she was inside the suspects residence of 9982 Fox Hall Court within the past 24 hours and that the location was being utilized for displaying pornographic materials via a computer to children under the age of 12 years. Victim W.M. additionally stated that Masters had hidden cameras throughout the residence.

3. Additionally, Victim M.W. explained during the copious acts they were watching together, Masters with his hands, reached underneath the Victim M.W.'s clothes, causing skin to skin sexual contact. Masters caressed the buttocks of the Victim M.W., advancing towards a more sexual behaviour.

4. In further details, on March 18th, 2016, suspect was engaged in a verbal argument with the Victim M.W.'s mother offering her money to not report the sexual abuse of Victim W.M. to the police.

5. During initial contact with Masters, a cursory search for officer safety was granted by Masters. As the cursory search was conducted several computers, surveillance cameras and photographic materials were observed.

6. Based on this information this affiant applied for and was granted a search warrant for 9982 Fox Hall Court, St. Ann Missouri by Judge Goldman of Division 12 St. Louis County State Court on 03/19/2016.

7. This search was executed by this affiant on 03/19/2016. Based on this search warrant multiple items of evidence were located at the residence and seized. Within the items seized were several items related to recording devices that were hidden in various areas of the home to include a camera facing into the bathroom, bedroom facing toward the bed, living room facing toward the couch and evidence suggesting that hidden cameras were placed at one time in the bathroom and shower area.

8. The above is a list of electronic equipment that this affiant believes may contain evidence of crimes as it relates to child molestation, the promotion of and possession of child pornography.

9. This affiant requests the authorization to have the above items forensically examined for the above described reasons.

10. This affiant knows through training and experience that persons that exploit children often use multiple devices to save and record victims as well as save for future use and trade. All items listed above are

[3]

Based on the affirmations contained in the search warrant affidavit. Judge Dueker authorized the search of Masters' computers and electronic media listed above.

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[3] This is an excerpt of the March 28, 2016 Search Warrant. A complete copy of the Search Warrant file is attached as Exhibit B.

6. On April 14, 2016, federal agents sought and obtained a third search warrant for Hilton's residence located at 1090 Boniface Lane, St. Ann, Missouri 63074. See Exhibit C.

Grounds for Suppression

7. The fruits of the search warrants issued on March 19, 2016, March 28, 2016, and April 14, 2016 in this cause were obtained in violation of Defendant Masters' Fourth Amendment Right to be free from unreasonable searches and seizures.

> "The point of the Fourth Amendment . . . is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime."

Johnson v. United States, 333 U.S. 10, 13-14, 68 S. Ct. 367, 92 L.Ed. 436 (1948); *see also Steagald v. United States*, 451 U.S. 204, 212, 101 S.Ct. 1642, 68 L.Ed. 2d 38 (1981) (warrant necessary because law enforcers "may lack sufficient objectivity to weigh correctly the strength of the evidence supporting the contemplated action against the individual's interests in protecting his own liberty"). Fourth Amendment law recognizes the inherent sanctity of a person's house. *United States v. McMullin*, 576 F.3d 810, 814 (8th Cir. 2009). "The caselaw has consistently recognized that considerably more protection is to be afforded to a home than other premises. The leading decisions . . . are each heavily predicated upon the ancient precept that 'a man's home is his castle.'" *Id.* citing *United States v. Agrusa*, 541 F.2d 690, 700 (8th Cir. 1976). Masters contends that the evidence in this case should be suppressed. He challenges the search warrants on the following grounds:

a) the search warrant, on its face, lacks probable cause;

b) the affidavits attached to the first, second, and third search warrants contain statements that are false, misleading, and show a reckless disregard for the truth and deletion of these statements would leave the affidavit insufficient to establish probable cause in violation of *Franks v. Delaware*, 438 U.S. 154 (1978);

c) the search was the product of an unlawful arrest;

d) the officers did not have valid consent or justification when they initially entered and searched before obtaining a search warrant;

e) the initial search of Masters' residence was an exploratory search beyond the scope of officer safety;

f) the search warrant contains overbroad and vague language; and

g) law enforcement seized items outside the scope of the search warrant.

I. March 19, 2016 Search Warrant

8. The search warrant, on its face, lacks probable cause to search Masters' residence for computers and recording devices. The affidavit purports that officers will search for evidence of "Felony Child Molestation in the First Degree and Child Pornography." However, the affidavit makes no mention of how a search for evidence of child molestation would extend to Masters' computers and recording devices. Further, the affidavit makes no mention of anything regarding possible possession of child pornography. A sworn affidavit must establish grounds for issuance of a search warrant. *See* Fed. R. Crim. P. 41(d). Nothing in the affidavit states that Masters recorded the alleged conduct or that he had child pornography on his computer. If an individual has a webcam on their computer, does that authorize a search of that computer because it "may" have recorded something?

The answer is no, and requesting a warrant on this basis is completely speculative in violation of the Fourth Amendment. Law enforcement has not established a sufficient nexus between the crime and the items they desire to search for and seize. The issuing judge or later reviewing courts should not have to guess or make suppositions regarding what officers mean in an affidavit. Probable cause must be clearly conveyed to the court to justify infringing upon an individual's Fourth Amendment Rights. Because the affidavit makes no connection between the allegation of child molestation in the first degree and the computers and recording devices allegedly observed during a cursory search of Masters' residence, no probable cause exists on the face of the search warrant and the evidence seized from the search must be suppressed.

Lies, False and Misleading Statements, and Reckless Disregard for the Truth

9. The search warrant contains false statements that, if deleted, would invalidate the search warrant. "[W]here the defendant makes a substantial preliminary showing that a false statement made knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request." *Franks v. Delaware*, 438 U.S. 154, 155-56, 98 S.Ct. 2674, 57 L.Ed 2d 667 (1978). In particular, a defendant must "point out specifically the portion of the warrant affidavit that is claimed to be false; and [the allegations] should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained." *United States v. Lucca*, 377 F.3d 927, 931 (8th Cir. 2004). A substantial preliminary showing does not require "clear proof." *See United States v. Williams*, 477 F.3d 554, 558 (8th Cir. 2007) ("[C]lear proof . . . is not required at the stage at which the

defendant is demonstrating an entitlement to an evidentiary hearing.") and *United States v. Gonzales, Inc.*, 412 F.3e 1102, 1111 (9th Cir. 2005) ("Our caselaw does not require clear proof of deliberate or reckless omissions or representation at the pleading stage."). "In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a *preponderance of the evidence*, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit." *Franks*, 438 U.S. at 156.

10. The good-faith exception does not apply when "the supporting affidavit contained knowing or reckless falsity" in violation of *Franks*. *See United States v. Hammond*, 351 F.3d 765, 773-74 (6th Cir. 2003) (declining to apply good faith exception where officer's affidavit contained "falsehoods and half-truths" in violation of *Franks*); *United States v. West*, 520 F.3d 604, 612 (6th Cir. 2008) (declining to apply good faith exception where officer violated *Franks* by "purposely withh[olding] information when he prepared his affidavit"); *United States v. Jacobs*, 986 F.2d. 1231, 1235 (8th Cir. 1993) (Under *Leon*,[4] a *Franks* violation is not excused.); and *United States v. Colkley*, 899 F.2d 297, 300 (4th Cir. 1990) (A warrant that violates *Franks* is not subject to the good faith exception to the exclusionary rule.).

11. Page two, paragraph one of the search warrant affidavit contains false statements:

> The purpose of this affidavit is to secure a state level search warrant for the residence located at 9982 Fox Hall Court, St. Ann, Missouri 63074 which is located in the city limits of St. Ann, Missouri, having a zip code of 63074. This request is based on information received by multiple victim's expressing the suspect committed the offense of child molestation in the first degree as the suspect had prior knowledge that the victims were less than fourteen years of age to sexual contact.

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[4] *United States v. Leon*, 468 U.S. 897, 914, 104 S. Ct. 3405, 82 L.Ed. 2d 677 (1984).

Detective Schmidt states that multiple victims[5] complained that Masters committed the offense of child molestation in the first degree.[6] This statement is false. Multiple alleged victims do not exist regarding incidents of child molestation in the first degree. Only Fitzgerald complained that Masters inappropriately touched her daughter M.M. No other allegations of child molestation as defined by statute were made by other individuals. Further, the allegation regarding M.M. in paragraph three is actually false as evidenced by her Child Advocacy Center (CAC) interview and the fact that Masters denies the allegation. Further support is the fact that he was never charged for any child molestation offense involving M.M.

12. Page two, paragraph two of the search warrant affidavit contains misleading statements and half-truths:

> By way of background and in further details, Thursday, March 17th, 2016, victim informed a guardian that she was inside the suspects residence of 9982 Fox Hall Court within the past 24 hours and that the location was being utilized for displaying pornographic materials to children under the ages of 12 years.

Detective Schmidt stated that a victim had informed a guardian that the house was being used to display pornographic materials to children under ages of twelve. This statement is false. None of the children stated in their CAC interviews that Masters showed them pornographic materials. In fact, the children went to Masters' residence and got on his computer when he was not home. While on the computer, the children accessed pornography, but not at the direction or with the

[5] The affidavit uses the vague term "victims" without identifying any alleged victim. The vagueness issue with this paragraph is addressed *infra*.

[6] A person commits the crime of child molestation in the first degree if he or she subjects another person who is less than fourteen years of age to sexual contact. RSMo. § 566.067.1 (2006). Sexual contact is defined as any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person. RSMo. § 566.010(3) (2006).

consent of Masters. They did this without his knowledge or permission. Law enforcement misled the court by implying that Masters was showing minors pornography on his computer which was not the case. Further, it was a reckless omission to not include that the pornography was actually accessed by the minors when Masters was not home. *See United States v. Tate*, 524 F.3d 449, 455 (4th Cir. 2008) (holding that agent's omission about the location of trash was deliberately deceptive and requiring a *Franks* hearing). If a minor secretly accesses pornography at a library, school, or grandparent's house, does that mean that those locations are being utilized for displaying pornographic material and subject to a state search warrant? This paragraph contained misleading information provided to a judge in an effort to usurp Masters' rights to be free from unreasonable searches and seizures.

13. Page two, paragraph three of the search warrant affidavit contains multiple false statements:

> Additionally, the victim explained during the copious acts they were watching together, suspect with his hands, reached underneath the victim's clothes, causing skin to skin sexual contact. The suspect caressed the buttocks of the victim, advancing towards a more sexual behaviour. All acts were designed for the suspect's sexual gratification.

Detective Schmidt alleges that the victim stated "during the copious acts they were watching together, the suspect with his hands, reached underneath the victim's clothes, causing skin to skin sexual contact. The suspect caressed the buttocks of the victim, advancing towards a more sexual behaviour [sic]." This statement is false. Detective Schmidt's written report states that Fitzgerald told him that Masters had done this to M.M. Conversely, in Fitzgerald's written statement, she makes no mention that Masters reached underneath M.M.'s clothing and caressed her buttocks or made any contact with M.M of a sexual nature as described in the affidavit. Further, in M.M.'s CAC interview, she states that Masters only rubbed her back while she was listening to music on his computer. She was not watching pornography with Masters as Detective Schmidt avers. The only allegation M.M. made was that Masters inappropriately touched her when he gave her a piggy back ride on an unknown date. M.M. alleged that Masters grabbed her buttocks and touched her vagina on the outside of her clothing during the piggy back ride. Both Fitzgerald, in her written statement, and M.M., in her CAC interview, mention this alleged incident. However, Masters was never charged with any crime for this piggy back ride. Notably, the alleged incident that both M.M. and Fitzgerald mention in their statements was not included in the search warrant affidavit. M.M. was present to be interviewed by law enforcement before they requested a search warrant. It appears from discovery that she was not interviewed on March 18 or 19, 2016 before execution of the warrant to verify the allegations. Failure to confirm such serious allegations is a reckless disregard for the truth. Further Fitzgerald and other witnesses were intoxicated and were not even asked to provide a written statement that Friday evening. During the 911 call, the caller admits that the adults are drinking and you one can hear Mr. Waller slurring his words in the background. Relying on the statements of inebriated individuals when Masters denied these claims at the scene is a reckless disregard for the truth.

14. Page two, paragraph four of the search warrant affidavit contains misleading information:

> In further details, on March 18th, 2016, suspect was engaged in a verbal argument with the victim's mother. Suspect was subsequently placed under arrest for further investigation.

Detective Schmidt states that Masters was engaged in a verbal argument with the victim's mother. This statement is false. After reviewing discovery, counsel assumes that this paragraph refers to Jamie Fitzgerald who confronted Masters and alleged he inappropriately touched her daughter. Masters did not engage her in any verbal dispute. Fitzgerald got in his face, yelled at him, and tried to attack him. Masters was not argumentative or aggressive toward Fitzgerald in any way. He denied the allegations and no charges of peace disturbance were ever brought by the City of St. Ann. The arrest of Masters was unlawful and without probable cause.

15. Page two, paragraph five of the search warrant affidavit contains misleading information and notes an illegal, pretextual search:

During initial contact with the suspect, a cursory search for officer safety, revealed several computers and photographic materials.

Detective Schmidt states that "[d]uring initial contact with the suspect, a cursory search for officer safety, revealed several computers and photographic materials." When officers initially contacted Masters, he was not in or near his house. Any search for officer safety was fictitious and pretextual. More importantly, in a second search warrant to search Masters' computers and other electronic media dated March 28, 2016, Detective Schmidt states in paragraph five of his affidavit that "[d]uring initial contact with Masters, a cursory search for officer safety was granted by Masters. As the cursory search was conducted several computers, surveillance cameras and photographic materials were observed." These statements are absolutely false. Officer Cafer placed Masters under arrest for peace disturbance and placed him in Officer Wilson's patrol vehicle. Officer Lipson approached Masters' residence where he was met by Masters' mother, Carol Hilton. He advised her that he had to enter the residence to check on other children. At no time did Masters, or his mother, give consent to search his house for "officer safety." The purpose of going to Masters' house was to determine whether any other children were in the house. While inside, the officers proceeded to conduct an exploratory search without a warrant.

16. Page two, paragraph six of the search warrant affidavit:

> In closing, during the cursory search, several visual recording devices, in inconspicuous areas of the dwelling. Location observed was in the living room, and in the computer room on the wire rack and on top of computer.

Detective Schmidt states that during the cursory search the officer located several recording devices in inconspicuous areas around the dwelling, specifically, in the living room and in the computer room "on the wire rack and on top of [the] computer." This paragraph is misleading because Officer Lipson, who performed the alleged cursory search for officer safety, made no mention in his written report that he observed any cameras anywhere in the residence other than in the living room on top of the television. How would Detective Schmidt know of other cameras unless a more thorough search was conducted prior to seeking a search warrant? When Hilton left the residence on March 18, 2016, law enforcement instructed her to leave the residence unlocked.

17. Masters has made a preliminary showing that false statements were made knowingly and intentionally, or with a reckless disregard for the truth, and included in the affidavit by Detective Schmidt. He supports these claims through affidavits executed by himself, Carol Hilton, and undersigned counsel. See Exhibits D-F. Each of these false statements was necessary to finding probable cause, and if deleted, no probable cause exists in the warrant affidavit to search Masters' residence. Masters requests a hearing pursuant to *Franks* on this matter.

18. After excising the false and misleading statements and those evidencing a reckless disregard for the truth, the search warrant affidavit does not support probable cause to search Masters' residence as requested. See Exhibit G.

Search was product of an unlawful arrest

19. The detention of Masters was an unlawful and unconstitutional arrest. Anything that occurred after the arrest was unlawful and the fruit of the poisonous tree. Officer Cafer placed Masters under arrest for an alleged peace disturbance. However, no factual basis exists that Masters disturbed the peace of any person. *See* City of St. Ann Ord. § 215.320, Peace Disturbance. Upon arrival at the residence, Officer Cafer "determined" that Masters was the primary aggressor and placed him under arrest for peace disturbance. However, Fitzgerald was the primary aggressor. She confronted Masters and, as stated in the 911 phone call, she tried to attack Masters. The parties in the house, not Masters, had been drinking and were yelling at him. Before placing Masters under arrest for peace disturbance, the police did not attempt to learn his side of the story, nor did they read him his rights and ask him to talk with them. In making this arrest, law enforcement displayed a reckless disregard for the truth. Masters did not inappropriately touch M.M. It does not appear from the discovery that the officers interviewed any of the children in the Waller residence. Of significance, Masters has never been charged with peace disturbance or child molestation. Because no probable cause exists to arrest Masters for peace disturbance or any other offense, as is evidenced by him not being charged with such, the arrest and subsequent searches were unlawful and the evidence obtained thereafter must be suppressed as fruit of the poisonous tree. If Masters was not in custody, a search of his home without his consent could not occur.

No consent to enter residence and
no consent to any search of residence

20. Entry into Masters' residence by officers was unlawful and without consent and the information and evidence obtained while in Masters' residence was the fruit of the poisonous tree. Masters did not give police consent to enter or search his residence. See Exhibit D. Any alleged

consent, implied or express, to enter or search the residence allegedly given by his mother, Carol Hilton, is not valid as she did not have actual or apparent authority to give consent to police officers to search Masters' residence.[7] *See United States v. Arreguin*, 735 F.3d 1168, 1176-78 (9th Cir. 2013) (search and admission of evidence improper because officer lacked reasonable belief that third-party house guest had authority to consent to search because evidence insufficient to suggest individual had "mutual use of" or "joint access or control" to residence); *United States. v. Peyton*, 745 F.3d 546, 552-54 (D.C. Cir. 2014) (search and admission of evidence improper because officers lacked reasonable belief that defendant's great grandmother, despite having authority over general common area, had common authority over shoebox located where officers knew defendant specifically stored personal belongings); *United States v. Hassock*, 631 F.3d 79, 88-89 (2d Cir. 2011) (agents' belief that woman found inside apartment had authority to consent to search not reasonable because police did not make any attempt to ascertain her identity or tenancy status before asking to "look around"); and *United States v. Cos*, 498 F.3d 1115, 1129-31 (10th Cir. 2007) (officers' belief that guest had authority to consent to search of apartment not reasonable because officers did not know guest's relationship to apartment or defendant, and they proceeded to search defendant's apartment without making further inquiry).

21. Any alleged consent to enter or search the residence given by Carol Hilton was an acquiescence to a claim of lawful authority. Consent is not voluntary if given only in acquiescence to a claim of lawful authority. *United States v. Wediul*, 325 F.3d 50, 54 (1st Cir. 2003) (consent to search not voluntary though resident said "okay" because officer's statement that he was going to search laundry room was a claim of lawful authority); *United States v. Robertson*, 736 F.3d 677, 680-

[7] Hilton did not consent to any search of Masters' residence. See Exhibit E.

81 (4th Cir. 2013) (consent to search not voluntary partly because suspect never gave verbal or written consent, but instead merely surrendered to officer's command); and *United States v. Escobar*, 389 F.3d 781, 786 (8th Cir. 2004) (consent to search not voluntary because officer falsely informed suspect that drug-sniffing dog positively identified presence of drugs in suspect's luggage).

Initial search of residence was exploratory and beyond the scope of a search for officer safety

22. Crucial information contained in the search warrant was the product of an unlawful search. Officer Lipson claims he performed a cursory[8] search of Masters residence for officer safety. However, he searched Masters residence much longer than needed to check for officer safety. Hilton told him that no one else was in the residence and he never drew his firearm while searching which would be consistent with a concern for officer safety. *See United States v. Nascimento*, 491 F.3d 25, 49 (1st Cir. 2007) (protective sweep is limited to a cursory visual inspection of those places where a person might be hiding); *United States v. Akrawi*, 920 F.2d 418, 421 (6th Cir. 1990) (protective sweep invalid because officers were on premises for 45 minutes and government failed to demonstrate that sweep was immediate and no longer than necessary); *United States v. Hogan*, 38 F.3d 1148, 1150 (10th Cir. 1994) (protective sweep invalid because officers were on premises for over two hours and there was no risk to officer safety). Officer Lipson's report is extremely detailed about the contents of Masters basement and the stairs leading up to the main floor evidencing the exploratory nature of his "cursory" search. Further, no camera allegedly observed by law enforcement was prominently displayed. Detective Schmidt sought a warrant based on this exploratory search for all electronic evidence that the Officers would deem to be evidence of the alleged crime. *United States v. Siciliano*,

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[8] Cursory is defined as "going rapidly over something, without noticing details; hasty; superficial." Dictionary.com, http://www.dictionary.com/browse/cursory?s=t (last visited January 16, 2017).

578 F.3d 61, 70-72 (1st Cir. 2009) (second search invalid because government would not have sought warrant absent knowledge, obtained during an unlawful protective sweep, that gel capsules and powder were in apartment); *United States v. Reilly*, 76 F.3d1271, 1280 (2d Cir. 1996) (second search invalid because issuance of warrant premised on material obtained in prior illegal search and remaining portion of affidavit offered only "bare-bones" description of defendant's land); *United States. v. Mowatt*, 513 F.3d 395, 404 (4th Cir. 2008) (warrant for subsequent search invalid because no assertion officers would have sought warrant without information from previous illegal, warrantless search), *abrogated by Ky. V. King*, 563 U.S. 452 (2011); *U.S. v. Madrid*, 152 F.3d 1034, 1041 (8th Cir. 1998) (search invalid because, even striking illegally obtained information, affidavit did not support probable cause finding); *United States v. McGough*, 412 F.3d 1232, 1240 (11th Cir. 2005) (second search invalid because warrant based on evidence obtained from previous illegal entry); and *United States v. Dawkins*, 17 F.3d 399, 407-08 (D.C. Cir. 1994) (warrant for subsequent search invalid because issuance of warrant based on observation of guns during initial invalid search, record did not show defendant would be in home), *amended by* 327 F.3d 1198 (D.C. Cir. 1994).

The search warrant contains overbroad and vague language, and lacks particularity

23. The search warrant contains overbroad and vague language as to what was to be seized. Detective Schmidt did not describe with sufficient particularity those items he was specifically searching for as he stated in the affidavit that he was searching for **"evidence…that Officers deem to be evidence in the above said case."** (emphasis added). Officers are not to be given discretion when executing a search warrant. The Fourth Amendment requires that a warrant describe with "particular[ity]…the place to be searched and the persons or things to be seized. U.S. CONST. amend. IV, Fed R. Crim. P. 41(e)(2). This limitation safeguards the individual against the "wide-ranging

exploratory searches the Framers [of the Constitution] intended to prohibit. *Md. v. Garrison*, 480 U.S. 79, 84 (1987).

24. The Search Warrant is overbroad and vague. It failed to describe with particularity the items to be seized.

- Stand-Alone Home Personal Computers
- Networked Home Personal Computer
- Network Servers/ Business Networks
- PDA, Cell Phones and Digital Cameras/Video Cameras
- Modems, Routers, and Wireless Access Points
- Wireless Personal Computers
- Thumd Drives
- All digital media
- Audio/Video recording devices
- Photographs and videos

See Andresen v. Md., 427 U.S. 463, 480 (1976) (warrant should describe class of objects to be seized with sufficient particularity to leave "nothing…to the discretion of the officer executing the warrant."); *United States v. Rosa*, 626 F.3d 56, 62 (2010) (warrant insufficiently particular where warrant authorized search of electronic devices without guidance about the type of evidence sought and thus did not link devices with suspected criminal activity); *Bartholomew v. Pa.*, 221 F.3d 425, 428-29 (3d Cir. 2000) (warrant insufficiently particular because it did not state items to be seized, and attached exhibit listing items was sealed); *Owens v. Lott*, 372 F.3d 267, 277 (4th Cir. 2004) (warrant to search all persons located at address insufficiently particular because no probable cause to conclude that everyone located at residence involved in drug sales); *Mink v. Knox*, 613 F.3d 995, 1011 (10th Cir. 2010) (warrant to search all computer and non-computer written materials insufficiently particular because warrant did not mention particular crime to which they related); *United States v. Travers*, 233 F.3d 1327, 1330 (11th Cir. 2000) (warrant insufficiently particular because it allowed officers to search categories of documents and "any other material reflecting identity, and anything reflecting potential fraud"); *United States v. Gardner*, 537 F.2d 861, 862 (6th Cir. 1976) (per curiam) (holding that a warrant authorizing search of "all firearms and ammunition" lacked particularity); *United States v. Bridges*, 334 F.3d 1010, 1016-18 (9th Cir. 2003) (holding that a warrant using the phrase "including but not limited to" lacked particularity); and *United States v. Otero*, 563 F.3d 1127, 1133 (10th Cir. 2009) (remanding on particularity grounds because the Circuit Court found that the most practical reading of the warrant authorized a wide-ranging search of the defendant's computer).

25. Further, the search warrant affidavit uses broad terms such as "victim" without naming an alleged victim, "copious acts" without describing what copious acts allegedly occurred, "utilized" without describing how the residence was being utilized, "sexual contact" without describing what kind of sexual contact allegedly occurred, and "sexual behavior" without describing what is meant by sexual behavior. Many search warrants contain definition sections for clarity purposes. For example, Exhibit C, a search warrant applied for by the Federal Bureau of Investigations (FBI), contains approximately three pages of definitions for clarity in the search warrant. However, the language in the March 19, 2016 search warrant contains no definitions for the vague language used. And it does not describe the facts with sufficient detail to establish probable cause that a crime was committed against any individual.

Items outside the scope of the warrant

26. Law enforcement seized various items not contained in the four corners of the search warrant: (1) a bag containing young girls clothes; (2) brackets for towel hook cameras; (3) makeup mirror and girl headbands; (4) miscellaneous young girls clothes; (5) two pornographic magazines; (6) baby oil and two lotion bottles; (7) black girls hair brush; (8) cold sore cream; (9) a silver cross

necklace containing hair follicle; and (10) purple bed sheets with off white stains. Because these items are outside the scope of the search warrant, they must be suppressed. *United States v. Fuccillo*, 808 F.2d 173, 177-78 (1st Cir. 1987) (evidence suppressed because executing officers exceeded scope of already overbroad warrant authorizing seizure of women's clothes by seizing two racks of men's clothes); *United States v. Coleman*, 805 F.3d 474, 483 (3d Cir. 1986) (evidence suppressed because officers exceeded scope of warrant authorizing seizure of certain financial records by seizing material not included in warrant); and *Groh v. Ramirez*, 540 U.S. 551, 561 (2004) ("The mere fact that the Magistrate issued a warrant does not necessarily establish that he agreed that the scope of the search should be as broad as the affiant's request.").

27. In seizing the above-referenced items, law enforcement exhibited a flagrant disregard for the terms of the search warrant. They seized items under their affidavit's broad language "any evidence . . . that Officers deem to be evidence in the above said case," not the items authorized in the search warrant. Masters contends that all evidence must be suppressed because of law enforcement's flagrant disregard for the terms of the search warrant. Even evidence which is properly seized pursuant to a warrant must be suppressed if the officers executing the warrant exhibit a "flagrant disregard" for its terms. *United States v. Medlin*, 842 F.2d 1194, 1199 (10th Cir. 1988) (suppressing fruits of authorized search where law enforcement seized 667 items not specifically authorized for seizure by the warrant).

II. March 28, 2016 Search Warrant

28. Masters incorporates all caselaw citations and allegations from the March 19, 2016 search warrant into this section. Page two, paragraphs 6, 7, and 8 of the March 28, 2016 search warrant affidavit are based on the illegal search complained of above. Because the initial search

warrant was invalid and without probable cause, the subsequent search warrant for the search of Masters' computers and other electronic media must is tainted and the evidence must be suppressed. In addition, this search warrant suffers from the same defects as noted previously.

More Lies, False and Misleading Statements, and Reckless Disregard for the Truth

29. The search warrant contains false statements that if deleted would invalidate the search warrant.

30. Page two, paragraph one of the search warrant affidavit contains false statements:

1. This affiant received information from multiple victim's expressing Joseph Masters committed the offense of child molestation in the first degree as he had prior knowledge that the victims who were less than fourteen years of age to sexual contact.

Detective Schmidt states that multiple victims complained that Masters committed the offense of child molestation in the first degree. This statement is false. Multiple alleged victims do not exist regarding incidents of child molestation in the first degree. Only Fitzgerald complained that Masters inappropriately touched her daughter M.M. No other allegations of child molestation as defined by statute were made by other individuals. Further, the allegation regarding M.M. noted in paragraph three is actually false as evidenced by her CAC interview and the fact that Masters denies the allegation. Further support is the fact that he was never charged for any child molestation offense involving M.M.

31. Page two, paragraph two of the search warrant affidavit contains false and misleading statements:

2. By way of background and in further details, Thursday, March 17th, 2016, victim M.W. informed a guardian that she was inside the suspects residence of 9982 Fox Hall Court within the past 24 hours and that the location was being utilized for displaying pornographic materials via a computer to children under the age of 12 years. Victim W.M. additionally stated that Masters had hidden cameras throughout the residence.

Detective Schmidt stated that M.W. had informed a guardian that the house was being used to display pornographic materials to children under ages of twelve. This statement is false. M.W. did not state in her CAC interview, or at any other time, that Masters showed her pornographic materials. Further, it states that Victim W.M. stated that Masters had hidden cameras throughout the residence; however, the government has not identified any alleged victim with the initials W.M. If a minor secretly accesses pornography at a library or school, does that mean that the library or school is being utilized to display pornographic material? This paragraph contained misleading information provided to a judge in an effort to usurp Masters' rights to be free from unreasonable searches and seizures. Further, it was a reckless omission to not include that the pornography was actually accessed by the minors when Masters was not home.

32. Page two, paragraph three of the search warrant affidavit contains multiple false statements:

> 3. Additionally, Victim M.W. explained during the copious acts they were watching together, Masters with his hands, reached underneath the Victim M.W.'s clothes, causing skin to skin sexual contact. Masters caressed the buttocks of the Victim M.W., advancing towards a more sexual behaviour.

Detective Schmidt states that while watching copious acts with M.W., Masters reached underneath M.W.'s clothes, causing skin to skin sexual contact, and that he caressed the buttocks of M.W. advancing towards a more sexual behavior. This statement is false. M.W. did not state in her CAC interview that she watched "copious acts" with Masters. Further, M.W. did not say in her CAC interview that Masters touched her in any inappropriate way. In fact, she affirmed the opposite, that he never did touch her inappropriately.

33. Page two, paragraph four of the search warrant affidavit contains false and misleading information:

> 4. In further details, on March 18th, 2016, suspect was engaged in a verbal argument with the Victim M.W.'s mother offering her money to not report the sexual abuse of Victim W.M. to the police.

Detective Schmidt states that Masters engaged in a verbal argument with M.W.'s mother and offered her money to not report the sexual abuse of W.M. to the police. This statement is false. M.W.'s mother has passed away and he never offered anyone money to not call the police. Further, Masters has not sexually abused any alleged victim, and the government has not identified any alleged victim with the initials W.M.

34. Page two, paragraph five of the search warrant affidavit contains misleading information and notes an illegal, pretextual search:

> 5. During initial contact with Masters, a cursory search for officer safety was granted by Masters. As the cursory search was conducted several computers, surveillance cameras and photographic materials were observed.

Detective Schmidt states that Masters granted a cursory search of his residence. This statement is false. Masters never consented to or gave permission to the officers to enter and search his residence. See Exhibit D.

35. Prior to the application for this Search Warrant, Detective Schmidt had the opportunity to correct the information that was false, misleading, and recklessly omitted in the March 19, 2016 search warrant. Yet, he chose not to. On March 23, 2016, five days prior to the application for the search warrant, Detectives Schmidt and Carrigan had the opportunity to view the CAC statements of M.M. and M.W. On March 25, 2016, three days prior to the application for the search warrant, the detectives had the opportunity to view the CAC statement of B.W. Further, on March 21, 2016, Fitzgerald and Waller made written statements regarding what their daughters had told them. Rather than include true and correct information in the March 28, 2016 search warrant, Detective Schmidt modified and added more false information to the search warrant affidavit. A piggy back ride accompanied by alleged inappropriate touching that was not

charged along with minors accessing pornography on an adult's computer while the adult is not home does not establish probable cause to search Masters computers and electronic media. Had Detective Schmidt provided Judge Dueker with accurate information, he would not have been able to obtain a search warrant for the computers and electronic media. The second search warrant highlights Detective Schmidt's reckless disregard for the truth and reckless omissions.

36. Page three, paragraphs twelve and thirteen contain inaccurate and misleading information. See Exhibit D.

37. Page three, paragraph fifteen contains a false statement.

15. M.J. also informed us, when she was laying on a blow-up mattress in the living room, the suspect had touched her exposed buttocks.

M.J. did not allege that Masters' touched her exposed buttocks while laying on an air mattress at his house. In M.J.'s CAC interview, she does not state that Masters touched her anywhere other than the leg. Further, in Detective Schmidt's report from March 23, 2016, when he interviewed M.J., M.D., and their mother Lauren Andablo, this allegation is not included in his written report concerning the interview. Finally, in Andablo's written statement, she makes no mention of the allegation contained in this paragraph.

38. Masters has made a preliminary showing that false statements were made knowingly and intentionally, or with a reckless disregard for the truth, and included in the affidavit by Detective Schmidt. He supports these claims through affidavits executed by himself, Carol Hilton, and undersigned counsel. See Exhibits D-F. Each of these false statements was necessary to finding probable cause, and if deleted, no probable cause exists in the warrant affidavit to search Masters' residence. Masters requests a hearing pursuant to *Franks* on this matter.

39. After excising the false and misleading statements and those evidencing a reckless disregard for the truth, the search warrant affidavit does not support probable cause to search Masters' residence as requested.

III. April 14, 2016 Search Warrant

40. Masters incorporates all caselaw citations and allegations from the March 19, 2016 search warrant into this section. Pages 10-12, paragraphs 21, 22, 23, 24, 25, and 26 of the April 14, 2016 search warrant affidavit are based on the illegal searches complained of above. Because the March 19, 2016 search warrant was invalid and without probable cause, and because the March 28, 2016 search warrant was the fruit of the poisonous tree, the April 14, 2016 search warrant is based on false and/or illegally obtained information and the search warrant must be quashed.

41. Page eleven, paragraph twenty-two of the search warrant affidavit states that Masters had attempted to commit sodomy on J.F.'s nine-year-old daughter. This statement is false. Masters never attempted to commit sodomy on J.F.'s nine-year-old daughter. See Exhibit D.

42. Page thirteen, paragraph thirty-four of the search warrant affidavit states that a black wire was concealed under the brim of Hilton's toilet with a black cord running into the hallway. This statement is false. No black cord or recording device was ever concealed anywhere on Hilton's toilet. See Exhibits D and E.

Conclusion

43. Counsel has reviewed the discovery that has been provided to Masters and discussed this case with the Assistant United States Attorney. Counsel has a good faith belief the government will seek to introduce the above referenced evidence.

WHEREFORE, the Defendant, having proper standing before this Court, requests that this Court grant a hearing pursuant to *Franks*, and enter an order suppressing any and all evidence seized as a result of the search of Masters' home, his mother's home, and the subsequent search of the computers and electronic media seized during the searches in violation of the Fourth Amendment to the United States Constitution.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following.

Ms. Colleen Lang
Asst. United States Attorney
111 South Tenth Street, 20th Floor
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/s/ Daniel A. Juengel
DANIEL A. JUENGEL